

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CA No.

JOSEPH P. CURRAN,

Plaintiff,

v.

SIDEPRIZE LLC a/k/a PERFORMANCE  
PREDICTIONS LLC d/b/a PRIZEPICKS,  
UNDERDOG SPORTS, LLC d/b/a  
UNDERDOG FANTASY, and YAHOO  
FANTASY SPORTS LLC

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

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Plaintiff Joseph P. Curran (“Mr. Curran” or “Plaintiff”), by his undersigned counsel and for his complaint against Defendants SidePrize LLC a/k/a Performance Predictions LLC d/b/a PrizePicks (“PrizePicks”), Underdog Sports, LLC d/b/a Underdog Fantasy (“Underdog”), and Yahoo Fantasy Sports LLC (“Yahoo”) (collectively, “Defendants”), avers as follows:

**INTRODUCTION**

1. This is an action under Mass. Gen. Laws ch. 137, § 1 for recovery of monies wagered with Defendants, even though Defendants intentionally refrained from registering with Massachusetts to be able to accept such wagers.

2. As set forth below, Defendants have violated Mass. Gen. Laws ch. 137, § 1 by, *inter alia*, falsely holding themselves out in Massachusetts as “Daily Fantasy Sports” operators. In

actuality, while Defendants may have some offerings which are considered Daily Fantasy Sports, until March 2024 (and possibly beyond), they also offered sports wagers. However, Defendants offered and accepted sports wagers in Massachusetts illegally because they were never registered in Massachusetts as entities that can accept such bets. Entities like FanDuel and DraftKings similarly offer Daily Fantasy Sports and sports wagers. However, the difference between these entities and Defendants is that both FanDuel and DraftKings are legally registered to offer both products in Massachusetts. Defendants, in contrast, are licensed only to offer Daily Fantasy Sports.

3. Up until at least March 8, 2024, Defendants offered so-called “prop bets” or “pick ‘em” bets (collectively, “illegal bets”) in Massachusetts without being properly registered to do so. A “prop bet” (derived from proposition bet), is a type of wager on a part of a sporting contest or event that may have nothing to do with the final outcome. An example of a prop bet might be a bet on which a player will score the first basket in a basketball game. Often, multiple prop bets can be combined into a single bet known as a “parlay.” In a parlay, the bettor needs to win each piece of a parlay bet in order to prevail in the bet. If the bettor loses any aspect of the parlay bet, the bettor loses the entire bet. Because the probabilities of winning each and every bet in a parlay are lower than with respect to winning a single bet, the parlay bet will pay out substantially more if the bettor is successful.

4. Regardless of whether the bettor places a single prop bet or parlay bet, if the bettor wins, Defendants would pay the bettor according to the bet. If the bettor lost, the bettor would owe Defendants or the “house” according to the bet. These bets are between the bettor and the house (*i.e.*, Defendants), and are not peer-to-peer like fantasy sports.

5. Until approximately March 6, 2024 (and possibly beyond), Defendants offered illegal bets in Massachusetts, sometimes in the form of a parlay, and sometimes on individual propositions.

6. Defendants collectively derived over \$10 million per month in total illegal gambling proceeds. On or about March 6, 2024, Defendants PrizePicks and Underdog ceased offering the illegal bets in Massachusetts pursuant to an apparent settlement with the Massachusetts Attorney General (“Massachusetts AG”). Upon information and belief, Yahoo may still be offering illegal bets in Massachusetts.

7. Mass. Gen. Laws ch. 137, § 1 provides as follows:

**Section 1: Recovery of money or goods lost at gaming or sports wagering; limitation period**

Whoever, by playing at cards, dice *or other game, or by betting on the sides or hands of those gaming*, except for gaming conducted in license gaming establishments pursuant to Chapter 23K *or sports wagering conducted pursuant to Chapter 23N, loses to a person so playing or betting money or goods*, and pays or delivers the same or any part thereof to the winner, or whoever pays or delivers money or other thing of value to another person for or in consideration of a lottery, policy or pool ticket, certificate, check or slip, or for in consideration of a chance of drawing or obtaining any money, prize or other thing of value in a lottery or policy game, pool or combination, or other bet, *may recover such money or the value of such goods in contract; and if he does not within three months after such loss, payment or delivery, without covin or collusion, prosecute such action with effect, any other person may sue for and recover in tort treble the value thereof.*

(Emphasis added.)

8. Chapter 23N of the Massachusetts General Laws, referenced in the statute above, contains a number of statutes concerning the authorization and regulation of sports wagering. These statutes include a requirement that anyone who accepts a sports wager must be licensed by Massachusetts. The statutes define “Sports Wagering” as follows:

“Sports wagering,” the business of accepting wagers on sporting events or portions of sporting events, other events, the individual performance statistics of athletes in a sporting event or other events or a combination of any of the same by any system or method of wagering approved by the commission including, but not limited to, mobile applications and other digital platforms; provided, that sports wagering shall not include the acceptance of any wager: (i) with an outcome dependent on the performance of an individual athlete in any collegiate sport or athletic event, including, but not limited, to in-game or in-play wagers; (ii) on a high school or youth sporting event; (iii) on injuries, penalties, player discipline or replay review; and provided further, that sports wagering shall not include fantasy contests as defined in section 11M1/2 of chapter 12. ***Sports wagering shall include, but shall not be limited to, single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets and straight bets.***

Mass. Gen. Laws, ch. 23N, § 3 (emphasis added).

9. According to the Massachusetts Gaming Commission, Chapter 23N of Massachusetts General Laws creates three types of sports wagering licenses: Category 1 for licensed casinos; Category 2 for racetracks and/or simulcast centers; and Category 3 for online/mobile operators.<sup>1</sup> Further, a licensed operator under Chapter 23N is, “required to follow Massachusetts law, the regulations promulgated by the MGC, and maintain significant consumer protections and responsible gaming programs. Additionally, licensed operators are taxed at 15% (retail) and 20% (online) of their gross sports wagering revenue – these funds are distributed to specific state funds according to MGL Chapter 23N.”<sup>2</sup> At no time did Defendants register for or hold any license under Chapter 23N.

10. Defendants’ illegal bets are “Sports Wagering” within the meaning of Chapter 23N, Section Three. Defendants, however, at all relevant times, did not possess a Massachusetts license to engage in Sports Wagering.

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<sup>1</sup> MASSACHUSETTS GAMING COMMISSION, <https://massgaming.com/about/sports-wagering-in-massachusetts/sports-wagering-licensees/> (last visited on Oct. 16, 2024).

<sup>2</sup> *Id.*

11. Massachusetts statutes must be followed, not ignored. And in the case of Mass. Gen. Laws ch. 23N, the statutory scheme exists to protect Massachusetts consumers from unscrupulous persons who accept Massachusetts residents hard-earned money but then seek to skirt the regulatory oversight of the State. Further, those who accept bets illegally, deprive the state of valuable license fees and tax revenue. In bringing this suit, Plaintiff seeks to protect the interests of Massachusetts residents by holding Defendants accountable for their willful disregard of Massachusetts law.

12. Upon information and belief, there are one or more persons having colorable claims against Defendants under Mass. Gen. Laws ch. 137, § 1 who have not sought recovery within the designated three-month time period as defined by the statute.

13. Pursuant to Mass. Gen. Laws ch. 137, § 1, Mr. Curran seeks the recovery of monies, paid or delivered to Defendants in connection with the aforementioned illegal bets. Mr. Curran further seeks to recover treble the value of said monies as provided by the statute.

### **THE PARTIES**

14. Plaintiff is an individual residing in Gloucester, Massachusetts. On occasion, Plaintiff engages in online betting activity through websites and apps that are legally registered to accept such wagers in Massachusetts. As a Massachusetts resident, Plaintiff has an interest in ensuring that companies that offer sports wagering, properly register with the state, pay the appropriate taxes and fees associated with wagering, and be subject to oversight by the state that licensed wagering platforms receive. Plaintiff has agreed to donate 100% of his recovery in this action to a charitable cause.

15. Upon information and belief, Defendant PrizePicks is a Georgia limited liability company with a principal place of business at 1230 Peachtree Street, NE, Suite 2800 Atlanta, GA 30309. At all relevant times hereto, PrizePicks was in the business of offering and selling on-line

wagering services to consumers throughout the Commonwealth of Massachusetts, among other locations.

16. Upon information and belief, Defendant Underdog is a Delaware limited liability company with a principal place of business at 150 Waterbury St. Fl 2, Brooklyn, NY 11206. At all relevant times hereto, Underdog was in the business of offering and selling on-line wagering services to consumers throughout the Commonwealth of Massachusetts, among other locations.

17. Upon information and belief, Defendant Yahoo is a Delaware limited liability company with a principal place of business at 701 First Ave., Sunnyvale, CA 94089. At all relevant times hereto, Yahoo was in the business of offering and selling on-line wagering services to consumers throughout the Commonwealth of Massachusetts, among other locations.

#### **JURISDICTION AND VENUE**

18. Plaintiff repeats and re-alleges the allegations set forth above.

19. This Court has personal jurisdiction over Defendants because, at all times relevant hereto, Defendants were registered in Massachusetts as a Fantasy Sports Operator, thereby purposefully availing themselves of the privilege of conducting activities within Massachusetts, thus invoking the benefits and protections of Massachusetts' laws. In addition, Defendants are subject to personal jurisdiction in Massachusetts by virtue of their transactions, marketing, advertising, and/or conducting trade/business throughout the Commonwealth at all times relevant hereto.

20. This Court has jurisdiction over the claims contained because the claims for damages exceed \$25,000.00.

21. Venue in this matter is proper as Plaintiff is a resident of Essex County, Massachusetts. Furthermore, Defendants offered illegal bets throughout Massachusetts, including in Essex County.

22. Mr. Curran has standing to bring this action as plaintiff under Mass. Gen. Laws ch. 137, § 1, which provides that if a person having a claim under the statute “does not within three months after such loss, payment or delivery, without covin or collusion, prosecute such action with effect, *any other person* may sue for and recover in tort treble the value thereof.” (Emphasis added.)

### **FACTUAL ALLEGATIONS**

23. Plaintiff repeats and re-alleges the allegations set forth above.

24. Upon information and belief, at all relevant times hereto, Defendants have been registered in Massachusetts as Fantasy Sports Operators. *See, e.g.*, Exs. A-D.

25. Defendants’ respective registrations in Massachusetts as Fantasy Sports Operators did not permit them to advertise and accept the illegal bets that are the subject of this lawsuit.

26. Defendants accepted illegal bets from Massachusetts consumers in amounts and for a period of time that are yet to be determined, despite not being registered to do so.

27. Regulators in numerous states, including Massachusetts, have taken action against Defendants for engaging in illegal wagering without being registered to do so in such states.

28. In July 2023, the Wyoming Gaming Commission (“WGC”) alleged that Underdog’s sports offerings fall under the “exact definition” of “sports wagering” as defined in Wyo. Stat. Ann. § 9-24-101(a)(xii), and that Underdog’s offerings may violate Wyoming gambling laws found in Wyo. Stat. Ann. § 6-7-101 through 104, §§ 9-24-101 through 106, and WGC’s Online Sports Wagering Rules Chapters 1 through 9. The Wyoming Gaming Commission stated that Underdog will “need to obtain an Online Sports Wagering Operator license from the Wyoming Gaming Commission.” And, if Underdogs wishes to “truly offer fantasy sports contests, [it] will need comply with the conditions set forth in Wyo. Stat. Ann. § 9-24-101(a)(iv).”

29. In September 2023, the Florida Gaming Commission sent cease and desist letters to Defendants and other entities. The letters allege that the Florida Gaming Commission (“FGC”) has become aware that Defendants may be engaged in offering or accepting illegal bets or wagers from Florida residents, and that Defendants may also be promoting and conducting an illegal lottery. The letter further states that “under Florida law, betting or wagering on the result of contests of skill, such as sports betting, including fantasy sports betting, is strictly prohibited and constitutes a felony offense unless such activity is otherwise exempted by statute.” Gambling in Florida can only be done by compact. Illegal wagering also constitutes a felony. The letter demands that the recipient cease and desist from offering bets or wagers from residents of the state.

30. It is believed that regulators in other states such as Kansas, Mississippi, Arkansas, North Carolina and Arizona, and possibly others, are also investigating Defendants.

31. Further, in 2024, PrizePicks also reached a \$15 million settlement with the New York State Gaming Commission for offering illegal bets in New York state during the period November 2019 through November 2023. PrizePicks no longer offers illegal bets in New York.

32. In February 2024, the Massachusetts Attorney General began an investigation into illegal wagering platforms which were offering illegal bets. At that time, the Attorney General sent cease and desist letters to these companies, including Yahoo. Such letters stated, “Your company offers or recently offered to Massachusetts consumers wagers referred to as ‘pick’em’ games, wherein the Massachusetts consumer selects a combination of individual players and each player’s predicted outcome in their respective individual games. If the Massachusetts consumer correctly predicts the outcomes for each of the individual players in their lineup, the consumer wins an amount calculated based on the amount of money they wagered. The consumer does not win if any one of the predictions in the lineup are incorrect.”



33. These cease and desist letters also stated:

This type of wager is a parlay. The Gaming Labs International Standards for Event Wagering Systems, GLI-33, which is incorporated by reference into the Massachusetts Gaming Commission's regulations for Sports Wagering Equipment, 205 Code Mass. Regs. 243, define a parlay as '[a] single wager that links together two or more individual wagers and is dependent on all of those wagers winning together.' Such parlays are expressly included in the definition of 'sports wagering' set forth in G.L. c. 23N, § 3. Because 'pick'em' games are sports wagering, they are not 'fantasy contests' as that term is defined in G.L. c. 12, § 11M1/2.<sup>3</sup>

34. Attorney General Campbell further stated that, "[i]n Massachusetts, we have laws on the books that demand safe and responsible conduct from gaming operators, and when those laws are ignored, my office will not hesitate to enforce them as a matter of public health and consumer protection. I want to thank the MGC for their partnership in prioritizing these matters." *Id.* At the same time, the Chair of the Massachusetts Gaming Commission, Cathy Judd-Stein, stated that: "[t]o ensure a safe, legal and regulated sports wagering market, every operator in Massachusetts must play by the same rules. The Attorney General is a critical partner in these efforts as the MGC implements its regulations and takes action to disrupt and eradicate illegal sports wagering in the Commonwealth. We thank Attorney General Campbell for her leadership and partnership." *Id.*

35. Defendants PrizePicks and Underdog did not receive cease and desist letters because before such letters were issued, Defendants PrizePicks and Underdog voluntarily agreed to cease and desist from offering such illegal bets in Massachusetts. For example, on or about March 4, 2024, PrizePicks stated: "PrizePicks has reached an agreement with regulators in Massachusetts to offer our peer-to-peer Arena game starting March 8th." A PrizePicks

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<sup>3</sup> Jessica Welman, *Massachusetts AG sends C&Ds to several licensed fantasy operators in the state*, SBCAMERICAS (Feb. 28, 2024), <https://sbcamericas.com/2024/02/28/massachusetts-fantasy-sports-ag-letter/>.

spokesperson said: “We appreciate the Massachusetts regulators’ willingness to work with us to make sure PrizePicks’ members and fantasy sports fans have no interruptions in their access to our contests.”<sup>4</sup>

36. Further, in late February 2024, Stacie Stern, Underdog’s vice president of government affairs and partnerships, released a similar statement regarding its voluntary cessation of illegal wagering in Massachusetts: “In consultation with the Massachusetts Attorney General’s office, we’ve moved to our peer-to-peer pick’em product in Massachusetts.”<sup>5</sup>

37. During the relevant period, Defendants have not been registered to accept sports wagers of any kind in Massachusetts. According to the Massachusetts Gaming Commission website, PrizePicks and Yahoo have never applied for a gaming license in Massachusetts. Defendant Underdog, however, did submit a “Scoping Survey” document in connection with a potential license application for a Category 3 wagering license.<sup>6</sup> The Massachusetts Gaming Commission states that a Scoping Survey is for informational purposes to aid the Commission in projecting the number of applicants for Sports Wagering Operator Licenses.<sup>7</sup> It is not, however, a license application to accept sports wagers. In connection with the Scoping Survey, Underdog set up a separate subsidiary called Underdog Sports Wagering LLC, which was to be a wholly-owned

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<sup>4</sup> Brad Senkiw, *PrizePicks Reaches Deal with Massachusetts Regulators to Alter DFS Offerings*, COVERS (Mar. 4, 2024, 9:40 A.M.), <https://www.covers.com/industry/prize-picks-reaches-deal-with-massachusetts-regulators-to-alter-dfs-offerings-march-4-2024>.

<sup>5</sup> Mike Mazzeo, *Massachusetts AG Cracks Down On Multiple Fantasy Sports Pick’em Companies*, LEGAL SPORTS REPORT (Feb. 27, 2024), <https://www.legalsportsreport.com/168603/massachusetts-ag-cracks-down-on-multiple-fantasy-sports-pickem-companies>.

<sup>6</sup> MASSACHUSETTS GAMING COMMISSION, <https://massgaming.com/wp-content/uploads/Underdog-redacted-1.pdf> (last visited Oct. 16, 2024).

<sup>7</sup> MASSACHUSETTS GAMING COMMISSION, <https://massgaming.com/about/sports-wagering-in-massachusetts/forms/prospective-operators-submitted-materials/> (last visited Oct. 16, 2024).

subsidiary of Underdog Sports Holdings, Inc. and a sister company to Defendant Underdog. Underdog Sports Wagering LLC also applied for sports wagering licenses in Colorado and Ohio as well.

### **COUNT I**

#### **Violation of Mass. Gen. Laws ch. 137, § 1**

38. Plaintiff repeats and re-alleges the allegations set forth above.

39. At all relevant times hereto, Defendants have been registered in Massachusetts as Fantasy Sports Operators.

40. At all relevant times hereto, Defendants' registrations in Massachusetts as Fantasy Sports Operators did not permit them to advertise and take the illegal bets described herein.

41. At no time did Defendants hold any license under Chapter 23N of the Massachusetts General Law to accept wagers on entire sports contests or portions of sports contests.

42. Defendants accepted illegal bets from Massachusetts consumers, in an amount and for a period of time that are yet to be determined, despite not being registered to do so.

43. Because Defendants were not properly registered to take illegal bets, any and all such bets taken by Defendants were illegal gaming activity under Mass. Gen. Laws ch. 137, § 1.

44. Defendants have violated Mass. Gen. Laws ch. 137, § 1 by accepting illegal bets without properly registering with Massachusetts as entities that can accept such bets.

45. One or more persons lost money to Defendants in connection with such illegal bets that those persons placed with Defendants.

46. Based on information and belief, no such persons have come forward within three months of placing such bets to recover the monies paid or delivered to Defendants in connection

with the illegal bets. Therefore, under Mass. Gen. Laws ch. 137, § 1, Plaintiff is authorized to bring suit against Defendants to recover such monies paid or delivered to Defendants.

47. As a direct and proximate result of Defendants' violations of Mass. Gen. Laws ch. 137, § 1, Plaintiff is entitled to recover treble the value of all monies wagered by Massachusetts consumers as a result of the illegal bets.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter Judgment against Defendants for their violations of Mass. Gen. Laws ch. 137, § 1 and award damages under Mass. Gen. Laws ch. 137, § 1 to Plaintiff, and that the Court add thereto costs and attorneys' fees.

**PRAYERS FOR RELIEF**

**WHEREFORE**, Plaintiff prays that the Court:

- A. Enter judgment that Defendants violated Mass. Gen. Laws ch. 137, § 1.
- B. Award Plaintiff all monies to which he proves himself entitled against Defendants, including, without limitation, recovery of treble the value of all monies wagered by consumers as a result of the illegal bets.
- C. Grant such other and further relief as the Court deems just and appropriate.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all claims and issues so triable.

Dated: October 17, 2024

Respectfully submitted,

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